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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON**

9 NATIONAL SHOOTING  
10 SPORTS FOUNDATION, INC.,

11 Plaintiff,

12 v.

13 ROBERT W. FERGUSON,  
14 Attorney General of the State of  
15 Washington,

16 Defendant.

NO. 2:23-cv-00113-MKD

DECLARATION OF RYAN  
BUSSE IN SUPPORT OF  
DEFENDANT'S OPPOTION TO  
PLAINTIFF'S MOTION FOR  
PRELIMINARY INJUNCTION

16 I, Ryan Busse, declare as follows:

17 1. I am over the age of 18, competent to testify as to the matters herein,  
18 and make this declaration based on my personal knowledge.

19 2. I have been asked by the Washington Office of the Attorney General  
20 to render an opinion on the ability of gun industry members to institute reasonable  
21 controls to prevent theft, trafficking, and straw purchases of firearms by third  
22 parties, and to prevent misuse of firearms when the firearm industry member has

1 reasonable cause to believe the person will commit self-harm or harm others.  
2 I have also been asked to provide an opinion on how firearms marketing efforts  
3 have changed over the last decades in ways that impact public safety.

4 **I. BACKGROUND AND QUALIFICATIONS**

5 3. After graduating college, I entered the firearms industry in 1992. I  
6 became a sales executive in the firearms industry in 1995 and I spent more than  
7 25 years in this role. While in the industry, I developed innovative sales teams,  
8 maintained relationships with the largest national retailers, and was responsible  
9 for worldwide sales of millions of firearms. I built a dealer-direct sales network  
10 that included more than 2,500 firearms dealers including locations in all 50 states,  
11 and I regularly visited these dealers. In my job, I also studied and built sales  
12 programs that relied on understanding the technical nature of most firearms  
13 available in the U.S. market, including AR platform guns and other types of rifles.

14 4. During my career, I played an integral role in building one of the  
15 largest firearms companies in the United States, Kimber, and I was nominated by  
16 shooting industry leadership many times for the SHOT Business “Shooting  
17 Industry Person of the Year” Award. I served in an executive sales capacity as  
18 Vice President of Sales until August 2020. While in the industry, I served as an  
19 advisor to the United States Senate Sportsmen’s Caucus, and as the North  
20 American board chairman for Backcountry Hunters & Anglers, a national  
21 wildlife conservation and hunting organization. I was also raised with firearms  
22 as an integral part of my life. I began shooting with various guns as a young boy

1 and have continued to regularly use and study guns throughout my life (I am  
2 now 53).

3 5. I left the firearms industry because I was concerned about what I  
4 believed to be irresponsible and dangerous marketing and sales practices. Since  
5 I left, I have served as an advisor to the 2020 Biden presidential campaign, I have  
6 testified twice before the U.S. Congress about the firearms industry and gun  
7 policy (before the House Committee on Oversight and Reform and the Joint  
8 Economic Committee, respectively), I have been called to testify in closed-door  
9 briefings at the U.S. Senate, and I currently serve as a Senior Advisor to the  
10 Giffords Foundation, a nonprofit advocacy organization working to reduce gun  
11 violence in the United States. I remain a proud and active gun owner,  
12 outdoorsman, and advocate for responsible gun ownership.

13 6. I have provided expert witness testimony in a number of cases,  
14 including *Miller v. Bonta*, No. 3:19-cv-01536-BEN-JLB (S.D. Cal.) and *Duncan*  
15 *v. Bonta*, No. 3:17-cv-1017-BEN-JLB (S.D. Cal.); *Oregon Firearms Federation*  
16 *Inc. v. State of Oregon*, No. 2:22-cv-01815-IM (D. Or.); *National Association for*  
17 *Gun Rights v. City of Highland Park*, Case No. 1:22-cv-04774 (N.D. Ill.);  
18 *Sullivan et al. v Ferguson et al.*, No. 3:22-cv-5403 (W.D. Wash.) and *Brumback*  
19 *et al. v Ferguson et al.*, No. 1:22-cv-03093 (E.D. Wash.).

20 7. I am being compensated at \$150 per hour for case review, research,  
21 and preparation of declarations and reports; \$300 per hour for testimony. My  
22 compensation is not contingent on the results of my reports or my testimony.

**II. SUMMARY OF OPINIONS**

7. In the following paragraphs, I focus on two primary areas pertinent to the questions in this case.

8. First, in my opinion, the firearms industry already knows about and is more than capable of instituting reasonable controls to help prevent gun theft and trafficking and the sale or distribution of firearms to straw purchasers, or to individuals that firearm industry members have reasonable cause to believe are at risk of using the firearm to harm themselves or others. The firearm industry has long encouraged, and is quite proud of, the voluntary use of reasonable controls to prevent misuse of firearms.

9. Second, I offer opinions about how firearms marketing has changed over the last decades to normalize civilian possession of tactical assault weapons and large capacity magazines. Recent marketing is increasingly aimed at young American men using imagery and messages promoting violence, civil unrest, and offensive use of such weapons. Moreover, with increasing focus on assault weapons and large capacity magazine sales, competition and sales pressures within the industry have resulted in a proliferation of such weapons intended for offensive (as opposed to self-defensive) actions. Irresponsible marketing and sales practices are now often deployed to sell these firearms. In addition, the same competitive pressures are resulting in an environment of continuous improvement, which means that these firearms designed for offensive purposes

1 are being “improved” to make them increasingly efficient and lethal in ways that  
2 are divorced from any reasonable self-defense needs.

3 **A. The Firearms Industry Can Readily Adopt Reasonable Controls to**  
4 **Prevent Certain Misuses of Firearms By Third Parties, Many of**  
5 **Which the Industry Already Encourages**

6 10. I have been provided with declarations submitted by executives of  
7 gun industry members filed in support of the NSSF’s motion for preliminary  
8 injunction in this case, including declarations from Susan Cupero of Smith &  
9 Wesson, Inc., Jeff Reh on behalf of Beretta U.S.A. Corp., and Hiedi Lee on behalf  
10 of Minuteman Ammunition. I understand that these gun industry members have  
11 claimed, generally speaking, that it is not possible to implement reasonable  
12 controls to impact the conduct of third-party purchasers and that the only way to  
13 avoid liability is effectively to “cease to do business as a federally licensed  
14 firearms manufacturer.” ECF No. 20 at ¶ 15; ECF No. 19 at ¶ 16, ECF No. 18  
15 at ¶ 10.

16 11. In my experience and opinion, these conclusory and self-serving  
17 assertions are simply not true. Gun industry members have long supported  
18 policies designed to prevent misuse of firearms by third-parties. Because of  
19 federal licensing and record requirements, there is no issue in knowing who the  
20 customers are, even if they are reached through two-step distribution. There are  
21 many ways in which the industry espouses reasonable measures with respect to  
22 these matters, through industry sponsored advertising encouraging retailers to be  
responsible and customers to follow federal law.

1           12. I understand that Senate Bill 5078 requires, among other things, that  
 2 firearm industry members implement “reasonable controls,” which refers to  
 3 “reasonable procedures, safeguards, and business practices, including but not  
 4 limited to screening, security, and inventory practices, that are designed and  
 5 implemented to do all of the following:”

6           (i) Prevent the sale or distribution of a firearm industry product  
 7 to a straw purchaser, a firearm trafficker, a person prohibited from  
 8 possessing a firearm under state or federal law, or a person who the  
 9 firearm industry member has reasonable cause to believe is at  
 substantial risk of using a firearm industry product to harm  
 themselves or unlawfully harm another, or of unlawfully possessing  
 or using a firearm industry product;

10           (ii) Prevent the loss of a firearm industry product or theft of a  
 11 firearm industry product from a firearm industry member; and

12           (iii) Ensure that the firearm industry member complies with all  
 13 provisions of state and federal law and does not otherwise promote  
 the unlawful sale, manufacture, distribution, importing, possession,  
 marketing, or use of a firearm industry product.

14           The gun industry has long encouraged voluntary efforts by gun industry  
 15 members to address these issues and it is my experience that industry members  
 16 took pride in funding and promoting these efforts.

17           13. **Theft:** The firearm industry voluntarily encourages reasonable  
 18 controls to prevent theft of firearms, both for economic and for safety reasons.  
 19 Firearm industry members have also long encouraged policies and practices that  
 20 track firearm inventory and prevent theft. For example, the NSSF has emphasized  
 21 that “[a] few hours of preparation can go a long way toward protecting your  
 22 business and community, and it can help secure the prosperity of your business

1 once a crisis subsides.”<sup>1</sup> The NSSF warns that in times of crisis, the industry  
2 “typically see a rapid increase in sales, which can lead to a depleted supply chain.  
3 This increase in demand can certainly help every retailer’s bottom line but  
4 it can also result in hoarding, straw purchasing and unauthorized reselling.” *Id.*  
5 The NSSF encourages gun industry members to create a plan to protect inventory  
6 from theft and straw purchases, including step-by-step guides and  
7 recommendations for ensuring secured inventory. *Id.*

8 14. In addition, the Bureau of Alcohol, Tobacco, Firearms and  
9 Explosives (ATF) publishes a guide, “Loss Prevention for Firearms Retailers,”  
10 which, in two pages, enumerates a host of best practices to secure gun inventory  
11 and prevent theft. Over the two pages, the ATF provides more than thirty  
12 suggestions to retailers as to how to “evaluate the security of your premises and  
13 help you develop a strategy for preventing losses.”<sup>2</sup> These include common sense  
14 precautions undertaken in any retail enterprise, such as maintaining “timely and  
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16 <sup>1</sup> NSSF Security and Compliance Team Members, *Protecting Your*  
17 *Firearm Business and the Public During a Crisis* (Mar. 19, 2020),  
18 [https://www.nssf.org/articles/protecting-your-firearms-business-and-the-public-](https://www.nssf.org/articles/protecting-your-firearms-business-and-the-public-during-a-crisis/)  
19 [during-a-crisis/](https://www.nssf.org/articles/protecting-your-firearms-business-and-the-public-during-a-crisis/).

20 <sup>2</sup> Bureau of Alcohol, Tobacco, and Firearms, *Loss Prevention for Firearms*  
21 *Retailers* (Jan. 2016), [https://www.atf.gov/firearms/docs/guide/loss-prevention-](https://www.atf.gov/firearms/docs/guide/loss-prevention-firearms-retailers/download)  
22 [firearms-retailers/download](https://www.atf.gov/firearms/docs/guide/loss-prevention-firearms-retailers/download) (last visited Jan. 11, 2023).

1 accurate acquisition and disposition records,” implementing alarm systems, and  
 2 educating employees about loss prevention measures.<sup>3</sup> These are reasonable  
 3 measures that any retailer—including gun industry members—can and do  
 4 implement. NSSF’s assertion that SB 5078’s “reasonable controls” language has  
 5 no discernible meaning rings hollow.

6 **15. Straw Purchases and Trafficking:** Policies that prevent sales to  
 7 straw purchasers, traffickers, or persons prohibited from possessing firearms are  
 8 reasonable, and gun industry members have encouraged such policies. NSSF has  
 9 repeatedly urged its members to take precautions against selling firearms to straw  
 10 purchasers, stating: “[T]he public has learned the severe consequences of  
 11 illegally purchasing a firearm for someone who cannot legally possess one or  
 12 who does not want to have his or her name associated with the transaction.”<sup>4</sup>  
 13 Indeed, NSSF and ATF partnered together to “design[] an educational program  
 14 to assist firearm retailers in the detection and possible deterrence of ‘straw  
 15 purchasers.’”<sup>5</sup> The “Don’t Lie for the Other Guy” campaign aims to prevent the

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16  
 17 <sup>3</sup> *Id.*

18 <sup>4</sup> NSSF, “*Don’t lie for the Other Guy*” *Straw Purchase Awareness Store*  
 19 *of the Year* (Feb. 20, 2013), [https://www.nssf.org/articles/dont-lie-for-the-other-](https://www.nssf.org/articles/dont-lie-for-the-other-guy-straw-purchase-awareness-store-of-the-year/)  
 20 [guy-straw-purchase-awareness-store-of-the-year/](https://www.nssf.org/articles/dont-lie-for-the-other-guy-straw-purchase-awareness-store-of-the-year/).

21 <sup>5</sup> ATF, *Don’t Lie for the Other Guy* (last reviewed Apr. 26, 2018),  
 22 <https://www.atf.gov/firearms/dont-lie-other-guy/>.



1 illegal straw purchase of firearms, including by promoting a “Retailer Tool Kit”  
 2 to assist retailers in recognizing and preventing straw purchases.<sup>6</sup> NSSF has  
 3 acknowledged that controls against selling to straw purchasers can be  
 4 implemented, stating that “[f]ederally licensed firearms retailers are on the front  
 5 lines every day working to prevent illegal purchases. This is the goal of everyone  
 6 in the firearms industry. No one in it wants to make sales to prohibited  
 7 individuals.”<sup>7</sup> These programs and policies underscore the point that SB 5078  
 8 provides adequate guidance as to “what controls . . . are or are not reasonable”  
 9 (ECF No. 17 at 15–16) and that NSSF and other firearm industry members are  
 10 already well aware of them.

11 16. **At-Risk Individuals:** Firearm industry members have long touted  
 12 efforts to prohibit gun sales to a person who appears to be at risk of harming  
 13 themselves or others. The NSSF has publicized its efforts to provide suicide  
 14 awareness training to retailers to encourage the recognition of suicide risk.<sup>8</sup> There  
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16 <sup>6</sup> Don’t Lie For the Other Guy, *Don’t Lie Retailer Kit*,  
 17 [www.dontlie.org/toolkit-request.cfm](http://www.dontlie.org/toolkit-request.cfm) (last visited Jan. 11, 2023).

18 <sup>7</sup> NSSF, “*Don’t Lie for the Other Guy*” is a Tool Box for Retailers, Not a  
 19 Hammer to Be Used Against Them (Sept. 19, 2014),  
 20 [https://www.nssf.org/articles/dont-lie-for-the-other-guy-is-a-tool-box-for-](https://www.nssf.org/articles/dont-lie-for-the-other-guy-is-a-tool-box-for-retailers-not-a-hammer-to-be-used-against-them/)  
 21 [retailers-not-a-hammer-to-be-used-against-them/](https://www.nssf.org/articles/dont-lie-for-the-other-guy-is-a-tool-box-for-retailers-not-a-hammer-to-be-used-against-them/) (last visited Jan. 9, 2023).

22 <sup>8</sup> *Id.*

1 are numerous news stories about employees of firearms retailers who refused to  
 2 sell a gun to a would-be customer because that person appeared dangerous or  
 3 unwell. Firearms industry members regularly note these stories, because they  
 4 provide further evidence that industry members can and often want to follow  
 5 reasonable policies that facilitate responsible gun ownership and protect against  
 6 illegal bad actors.

7 17. To this end, the NSSF has acknowledged the importance of not  
 8 selling firearms to people who are at risk of harming themselves or others. The  
 9 NSSF has stated that it “promotes and values” the “programs that are designed to  
 10 keep firearms out of the hands who shouldn’t have them. That includes those who  
 11 might be suffering a mental health crisis as well as prohibited individuals and  
 12 unsupervised children.”<sup>9</sup> The NSSF has stated that “[k]eeping guns out of the  
 13 hands of convicted felons, minors, persons determined by a court of law to be  
 14 ‘mentally defective’ and other individuals prohibited by law from owning  
 15 firearms is critical to preventing violent crime and keeping communities safe.”<sup>10</sup>  
 16 The NRA has made similar statements, stating that “[i]t has been the NRA’s  
 17 longstanding position that those who have been adjudicated as a danger to  
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 20 <sup>9</sup> Bartozzi, *supra* note 4.

21 <sup>10</sup> NSSF, Real Solutions, *Don’t Lie for the Other Guy*,  
 22 <https://www.nssfreesolutions.org/programs/dont-lie/> (last visited Jan. 9, 2023).

1 themselves or others should not have access to firearms and should be admitted  
2 to treatment.”<sup>11</sup>

3 18. And news reports confirm that when responsible gun sellers take  
4 these precautions, they can be effective. In 2016, an Ohio gun store-owner  
5 “refused to sell a gun to 25-year-old James Howard. Howard passed a  
6 background check, but he made statements that indicated he may want to harm  
7 himself or others.”<sup>12</sup> The owner said that the purchaser’s behavior “was a red  
8 flag.”<sup>13</sup> Law enforcement credited the retailer with preventing a mass shooting at  
9 a university.<sup>14</sup> There are other similar stories of responsible owners and  
10 employees refusing to sell to prospective buyers who had threatened mass  
11

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12 <sup>11</sup> Joseph Zeballos-Roig, *The NRA Issued a Statement Supporting*  
13 *Trump’s Call to Focus on Mental Illness to Reduce Gun Violence After*  
14 *the Shootings in El Paso and Dayton*, Business Insider (Aug. 5, 2019),  
15 [https://www.businessinsider.com/nra-statement-backing-trump-el-paso-dayton-](https://www.businessinsider.com/nra-statement-backing-trump-el-paso-dayton-shootings-mental-illness-2019-8)  
16 [shootings-mental-illness-2019-8](https://www.businessinsider.com/nra-statement-backing-trump-el-paso-dayton-shootings-mental-illness-2019-8).

17 <sup>12</sup> Chanda Neely, *Gun Shop Owner Thwarts Possible Mass Shooting at*  
18 *Ohio University*, Cleveland.com (updated Mar. 27, 2016),  
19 [https://www.cleveland.com/metro/2016/03/gun\\_shop\\_owner\\_thwarts\\_possible.ht](https://www.cleveland.com/metro/2016/03/gun_shop_owner_thwarts_possible_mass_shooting_at_ohio_university/)  
20 [ml](https://www.cleveland.com/metro/2016/03/gun_shop_owner_thwarts_possible_mass_shooting_at_ohio_university/).

21 <sup>13</sup> *Id.*

22 <sup>14</sup> *Id.*

1 shootings or exhibited other signs of an intent to harm others, including by  
 2 individuals who went on to later commit horrific acts of violence. Such refusals  
 3 occurred in Pennsylvania,<sup>15</sup> New York,<sup>16</sup> Florida,<sup>17</sup> Texas,<sup>18</sup> Minnesota,<sup>19</sup> and  
 4 \_\_\_\_\_

5 <sup>15</sup> Rudy Chinchilla, *Man Threatened Temple University While Buying Rifle*  
 6 *Bullets, Police Say*, NBC News Philadelphia (Aug. 4, 2019),  
 7 [https://www.nbcphiladelphia.com/news/local/temple-university-threats-buying-](https://www.nbcphiladelphia.com/news/local/temple-university-threats-buying-bullets-patrick-buhler/165883/)  
 8 [bullets-patrick-buhler/165883/](https://www.nbcphiladelphia.com/news/local/temple-university-threats-buying-bullets-patrick-buhler/165883/).

9 <sup>16</sup> Douglass Dowty, *Police: How Syracuse University Student was Stopped*  
 10 *While Planning Mass Shooting*, Syracuse.com (Apr. 5, 2018),  
 11 [https://www.syracuse.com/crime/2018/04/police\\_how\\_syracuse\\_university\\_stu](https://www.syracuse.com/crime/2018/04/police_how_syracuse_university_student_was_stopped_while_planning_mass_shooting.html)  
 12 [dent\\_was\\_stopped\\_while\\_planning\\_mass\\_shooting.html](https://www.syracuse.com/crime/2018/04/police_how_syracuse_university_student_was_stopped_while_planning_mass_shooting.html).

13 <sup>17</sup> Brian Ross, Gerry Wagschal, Rhonda Schwartz, *Gun Store Owner: We*  
 14 *Alerted FBI to ‘Suspicious’ Customer Weeks Before Orlando Shooting*, ABC  
 15 News (June 16, 2016), [https://abcnews.go.com/US/orlando-shooter-turned-gun-](https://abcnews.go.com/US/orlando-shooter-turned-gun-store-suspicious/story?id=39901107%20772-263-9222)  
 16 [store-suspicious/story?id=39901107%20772-263-9222](https://abcnews.go.com/US/orlando-shooter-turned-gun-store-suspicious/story?id=39901107%20772-263-9222).

17 <sup>18</sup> CBS Austin, *APD: South Austin Shooting Spree Suspect Charged with*  
 18 *Murder*, July 13, 2018 [https://cbsaustin.com/news/local/affidavit-suspect-in-s-](https://cbsaustin.com/news/local/affidavit-suspect-in-s-lamar-homicide-tried-to-by-gun-suppressor-before-shooting-spree)  
 19 [lamar-homicide-tried-to-by-gun-suppressor-before-shooting-spree](https://cbsaustin.com/news/local/affidavit-suspect-in-s-lamar-homicide-tried-to-by-gun-suppressor-before-shooting-spree).

20 <sup>19</sup> Stephen Groves & Trisha Ahmed, *FBI: Minnesota Man was Making*  
 21 *Arsenal, Revered Mass Shooters*, AP News (Dec. 16, 2022),  
 22 <https://apnews.com/article/minnesota-d5004c013cfc4520481f4cad047e9cd9>.

1 Illinois.<sup>20</sup>

2 19. The NSSF has also encouraged firearms industry members to  
3 promote safe storage practices, in order to prevent theft or misuse. NSSF's  
4 website explains that "[p]rograms promoting safe firearm storage practices work.  
5 There is no other way to explain the fact that with over 380 million firearms in  
6 the U.S. today, accidents with firearms have dropped to historical lows."<sup>21</sup> This  
7 includes "educating the public about storage options so that firearms are not  
8 accessible by those at risk of self-harm or harm of others."<sup>22</sup> The NRA has  
9 emphasized similar education and promotion."<sup>23</sup> Responsible firearm industry

10 \_\_\_\_\_  
11 <sup>20</sup> Megan Hickey, *'We did the right thing': Manager of Oak Forest Gun*  
12 *Shop Speaks About Moments When Ketura Wilson Demanded Ammunition and*  
13 *was Denied*, CBS News Chicago (Apr. 5, 2022), [https://www.cbsnews.com/chicago/news/manager-of-oak-forest-gun-shop-speaks-about-moments-when-](https://www.cbsnews.com/chicago/news/manager-of-oak-forest-gun-shop-speaks-about-moments-when-ketura-wilson-demanded-ammunition-and-was-denied/)  
14 [ketura-wilson-demanded-ammunition-and-was-denied/](https://www.cbsnews.com/chicago/news/manager-of-oak-forest-gun-shop-speaks-about-moments-when-ketura-wilson-demanded-ammunition-and-was-denied/).

15  
16 <sup>21</sup> Steve Sanetti, *The Success of Safe Storage Programs, by the Numbers*,  
17 NSSF (Sept. 11, 2017), [https://www.nssf.org/articles/the-success-of-safe-](https://www.nssf.org/articles/the-success-of-safe-storage-programs-by-the-numbers/)  
18 [storage-programs-by-the-numbers/](https://www.nssf.org/articles/the-success-of-safe-storage-programs-by-the-numbers/).

19 <sup>22</sup> Joe Bartozzi, *Mental Health and Firearm Ownership*, NSSF (Oct. 6,  
20 2020), <https://www.nssf.org/articles/mental-health-and-firearm-ownership/>.

21 <sup>23</sup> NRA.org, Eddie Eagle Gunsafe Program, *Talking to Your Child About*  
22 *Gun Safety*, <https://eddieeagle.nra.org/parents/> (last visited Jan. 10, 2023);

1 members already promote safely securing guns and understand what reasonable  
2 measures can be taken to implement such policies—and the NSSF and NRA  
3 agree with these policies.

4 20. As demonstrated above, there is a core understanding of the types of  
5 reasonable controls and procedures that can be used by firearm industry members  
6 to prevent misuse of firearms through theft and criminal diversion, and to prevent  
7 guns from falling into the hands of those whom firearm industry members have  
8 reasonable cause to believe intend to commit harm to themselves or others. To a  
9 large extent, that understanding has been developed by the industry itself. In my  
10 25 years inside the industry, I visited hundreds of firearms retailers. In my  
11 experience, the vast majority not only adhere to the spirit of reasonableness, but  
12 many also take it further and institute their own training and monitoring systems  
13 to guard against irresponsible actions. It is my opinion that a law codifying these  
14 baseline reasonable behaviors will reinforce what is already accepted as industry  
15 best practices, and discourage or prevent bad actors who are not exercising such  
16 reasonable controls.

17 21. **Advertising monitoring programs:** Firearms manufacturers are  
18 often aware of the the ways in which retailers advertise or market their products  
19 via extensive “co-op advertising” programs. Most large manufacturers utilize

20 \_\_\_\_\_  
21 NewsCore, *How to store guns safely in your home*, Fox News (Feb. 6, 2017),  
22 <https://www.foxnews.com/real-estate/how-to-store-guns-safely-in-your-home>.

1 some version of “co-op advertising” which requires that retailers advertise the  
 2 company’s products, and that those advertisements meet well-codified standards  
 3 as determined by an audit of the advertisements. If retailers meet these standards  
 4 and submit proof of payment for the advertising, the firearms manufacturers then  
 5 reimburse some or all of the advertising costs. In other words, firearms companies  
 6 already utilize a system of closely monitoring and funding retailer advertising  
 7 activity. The existence of such programs is well known inside the industry and is  
 8 often mentioned as an official expense in reports such as the Smith & Wesson  
 9 10-K reports.<sup>24</sup>

10 **B. The History and Current State of the Firearms Industry’s Dangerous**  
 11 **Marketing Practices**

12 **1. Gun industry marketing has focused on normalizing increasing**  
 13 **civilian sales of tactical military-grade assault weapons and**  
 14 **large capacity magazines**

15 22. I entered the firearms industry in 1995 and had direct experience  
 16 with many of the top executives, editors, and organizational leaders in the  
 17 industry and paid careful attention to the ways in which marketing and sales  
 18 practices changed over time. During the 1994-2004 federal “ban,” assault

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19 <sup>24</sup> U.S. Securities & Exchange Commission, Form 10-K, Smith & Wesson  
 20 Brands, Inc. [https://ir.smith-wesson.com/static-files/33695d7e-7b2c-45d6-a020-](https://ir.smith-wesson.com/static-files/33695d7e-7b2c-45d6-a020-e39dd2fcc1ef)  
 21 [e39dd2fcc1ef](https://ir.smith-wesson.com/static-files/33695d7e-7b2c-45d6-a020-e39dd2fcc1ef) (last visited May 19, 2023) (mentioning increased co-op  
 22 advertising costs).

1 weapons, especially the AR-15 variants, became a symbolic image of resistance  
2 for the gun industry. By 2004, I observed a few small industry members who  
3 were gearing up to use the battle over large capacity magazines and AR-15s as a  
4 marketing tool to sell firearms.

5 23. But even after the federal legislation expired, the firearm industry  
6 did not immediately begin producing or selling assault weapons and large  
7 capacity magazines in large numbers. That is because there was a continued  
8 general agreement by the vast majority of industry leaders that these guns, which  
9 were very clearly designed for military-style, offensive (i.e., attacking) use, and  
10 related gun paraphernalia—including virtually all large capacity magazines,  
11 which were generally also considered to be for military-style, offensive use—  
12 would not be displayed at trade shows or used at industry-sponsored shooting  
13 events for civilian purchase.

14 24. This is why until well into the mid-2000s, the industry would not  
15 allow any company to display any “tactical” gear in the main section of the largest  
16 industry trade shows like S.H.O.T. (the Shooting Hunting Outdoor Trade show),  
17 which is governed by NSSF. It was, and still is, common understanding in the  
18 industry that the label “tactical” denoted “planned military or police action.”  
19 Accordingly, such gear was displayed only in the special Military and Law  
20 Enforcement section of the S.H.O.T. show. And, at that time, in order to enter  
21 this area, an attendee was required to present verified military or law enforcement  
22 identification credentials. These rules were self-enforced by the industry because

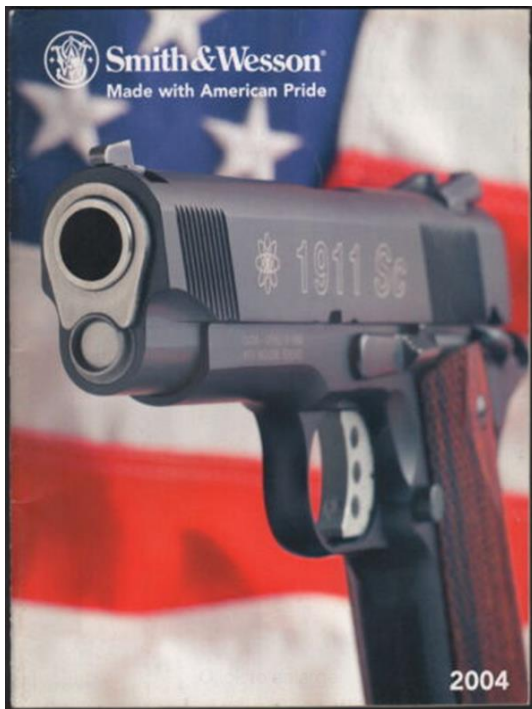


1 it was universally accepted that firearms designed for tactical or “assault”  
2 purposes deserved this special regulation or voluntary responsibility.

3 25. This industry consensus on these offensive guns extended to many  
4 gun stores and all of the largest sporting goods retailers in the country. A large  
5 number of these stores would sell or display assault weapons or AR-15s or  
6 AK-47s until the mid-2000s. This remained true even as late as 2006.

7 26. During the mid-2000s, and especially after the Sandy Hook mass  
8 shooting in 2012, the firearms industry shifted marketing efforts towards  
9 developing the “tactical market.” Again, in the industry, the term “tactical”  
10 generally refers to weapons and accessories that are meant for offensive military  
11 or law enforcement operations. This market now generally includes AR-15s,  
12 battle pistols, and other handguns from various manufacturers, as well as  
13 accessories such as bullet-proof vests and a wide variety of large capacity  
14 magazines.

15 27. Here are two images which illustrate the dramatic transition in the  
16 gun industry from the time when tactical guns were not accepted or normalized,  
17 to current times when tactical firearms are a central business focus. The first  
18 image is the 2004 Smith and Wesson annual product catalog cover in which a  
19 1911 pistol with an 8-round capacity is featured. The second image is the 2019  
20 Smith and Wesson catalog cover on which the Smith and Wesson M&P15 pistol  
21 and rifle (with large capacity magazine) are featured prominently. Neither of  
22 those “tactical” firearms existed in 2004:



28. While there were pistols with large capacity magazines sold and marketed before the mid-2000s, they were far less common and certainly not a central focus for industry growth before 2008. The increased prevalence of these “battle pistols” and other similar large-capacity-magazine-capable handguns is closely tied to the rise of the AR-15 and the related industry shift to tactical or offensive (as opposed to defensive) firearms. It was not until very recently that the gun industry began to push AR-15s, large capacity magazines, and other assault-style guns, leading to the more prominent marketing we see today.

29. The following table of data compiled by NSSF clearly illustrates that sales of such tactical guns (MSR, AR-15 and AK-47) have increased dramatically. In 2020, assault weapons comprised 12.2% of total gun sales, seven times higher than the 1990 percentage. In numeric terms, sales have increased by

1 nearly 4,000% from 1990 until now, despite the fact that no federal, and few state,  
 2 restrictions on such guns existed in 1990 (74,000 units in 1990 versus 2,798,000  
 3 in 2020):<sup>25</sup>

### Estimated Modern Sporting Rifles in the United States 1990 – 2020

Year	US Production less exports of MSR/AR platform	US Import less exports of MSR/AR, AK platform	ANNUAL TOTAL
1990	43,000	31,000	74,000
1991	46,000	69,000	115,000
1992	33,000	72,000	105,000
1993	62,000	226,000	288,000
1994	103,000	171,000	274,000
1995	54,000	77,000	131,000
1996	27,000	43,000	70,000
1997	44,000	81,000	125,000
1998	70,000	75,000	145,000
1999	113,000	119,000	232,000
2000	86,000	130,000	216,000
2001	60,000	119,000	179,000
2002	97,000	145,000	242,000
2003	118,000	262,000	380,000
2004	107,000	207,000	314,000
2005	141,000	170,000	311,000
2006	196,000	202,000	398,000
2007	269,000	229,000	498,000
2008	444,000	189,000	633,000
2009	692,000	314,000	1,006,000
2010	444,000	140,000	584,000
2011	653,000	163,000	816,000
2012	1,308,000	322,000	1,630,000
2013	1,882,000	393,000	2,275,000
2014	950,000	237,000	1,187,000
2015	1,360,000	245,000	1,605,000
2016	2,217,000	230,000	2,447,000
2017	1,406,000	158,000	1,564,000
2018	1,731,000	225,000	1,956,000
2019	1,679,000	169,000	1,848,000
2020	2,466,000	332,000	2,798,000
TOTALS	18,901,000	5,545,000	24,446,000

Source: ATF AFMER, US ITC, Industry estimates

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20 <sup>25</sup> NSSF, *Estimated Modern Sporting Rifles in the United States 1990-*  
 21 *2020*, [https://www.nssf.org/wp-content/uploads/2022/07/EstMSR1990\\_2020.pdf](https://www.nssf.org/wp-content/uploads/2022/07/EstMSR1990_2020.pdf)  
 22 (last visited Jan. 12, 2023).

1           30. In my opinion and experience, this proliferation is the result of a  
2 direct and purposeful industry marketing effort to normalize ownership of these  
3 guns as “common.” In 2009, as part of this normalization effort, the firearms  
4 industry, through the NSSF, facilitated a public re-branding of assault rifles to  
5 make them seem more socially acceptable. As part of this campaign, the NSSF  
6 broadly encouraged an industry-wide effort to rename such guns as “Modern  
7 Sporting Rifles” or MSRs, instead of as tactical or assault weapons. This is not  
8 unlike the effort of Colt to market an AR-15 “Sporting rifle” in previous decades.  
9 But unlike Colt’s failed marketing in the 1980s, the assault-style guns in the late  
10 2000s were themselves increasingly sold with large capacity magazines and  
11 steadily increased functionality that increased the lethality of the military assault  
12 rifle.

13           31. Despite the fact that the rifles and large capacity magazines are not  
14 sporting guns, industry members, including me, were strongly encouraged to stop  
15 using the term “assault rifle” or even “tactical weapon” because those terms were  
16 thought to too transparently refer to offensive military assaults and would harm  
17 the public perception of such guns and decrease sales.

18           32. The terms “Assault Rifle” and “Assault Weapon” were first used to  
19 describe the German World War II “Sturmgewehr”-44 rifle, which roughly  
20  
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1 translates to “Storm” or “Assault” rifle.<sup>26</sup> The name was subsequently applied to  
 2 many similar rifles in the coming decades, including dozens of models sold in the  
 3 United States. Well into the 2000s, almost everyone I knew in the industry used  
 4 the terms “assault weapon” and “assault rifle.” During my career, I personally  
 5 experienced the overt effort by NSSF to deflect away from that moniker by  
 6 reframing the origin of this terminology. This effort is still ongoing today and  
 7 commonly referenced industry instructions remain on the NSSF website: “If  
 8 someone calls an AR-15 or other semi-automatic rifle an ‘assault weapon,’ he or  
 9 she either supports banning these firearms or does not understand their function  
 10 and sporting use, or both. Please correct them. ‘Assault weapon’ is a political  
 11 term created by California anti-gun legislators to ban some semi-automatic rifles  
 12 there in the 1980s.”<sup>27</sup>

13 33. Since the late-2000s there has been a rapid increase in the number  
 14 of companies that manufacture and market versions of AR-15s, and other similar  
 15 assault weapons that are now increasingly sold and marketed with large capacity  
 16

17 <sup>26</sup> CNN article on the derivation of Assault Rifle term. Aaron Smith, *The*  
 18 *Nazis’ Assault Rifle Now Made in America*, CNN Business (June 29, 2016),  
 19 [https://money.cnn.com/2016/06/29/smallbusiness/german-sturmgewehr-assault-](https://money.cnn.com/2016/06/29/smallbusiness/german-sturmgewehr-assault-rifle/index.html)  
 20 [rifle/index.html](https://money.cnn.com/2016/06/29/smallbusiness/german-sturmgewehr-assault-rifle/index.html) (last visited May 19, 2023).

21 <sup>27</sup> NSSF, *Modern Sporting Rifle Facts*, <https://www.nssf.org/msr/> (last  
 22 visited Jan. 20, 2023).

1 magazines. This has resulted in a transformation of the marketplace from only a  
2 few AR-15 manufacturers in 2000, to several hundred AR-15/assault rifle  
3 companies today. The list of AR-15 manufacturers now includes small and  
4 medium companies, to the largest firearms companies in the United States, all of  
5 whom are striving to obtain market share with derivatives of what is effectively  
6 the same product.

7 34. The crowded nature of the marketplace has created a highly  
8 competitive environment resulting in thousands of “continuous improvements”  
9 in AR-15-style firearms sold to the general public as a way to encourage  
10 consumers to buy one rifle over another. Over time, these improvements have  
11 generally been incorporated into most rifles across the marketplace, resulting in  
12 a market flooded with firearms that are more accurate, more portable, and more  
13 specifically tailored to produce lethal outcomes. These guns are now also far  
14 more likely to be sold with a large capacity magazine.

15 35. Mirroring the trend in AR-15s, there has also been a notable increase  
16 in the prevalence in the civilian marketplace of handguns designed to accept large  
17 capacity magazines. While it is generally true that larger capacity handguns have  
18 existed in the industry for several decades, until the mid-2000s there was little  
19 focus on them as a central source for industry product development and growth.  
20 In my experience in the industry, the acceptance of the AR-15 and the large  
21 capacity magazines often sold with these rifles catalyzed the related change in  
22 the handgun market.



36. The recent shift in focus to tactical, offensive, higher capacity handguns has resulted in a competitive trend that is accelerating and therefore creating an “arms race” within the industry. Where there were once relatively few such guns or marketing efforts, now most of the largest firearms makers in the United States offer several versions of handguns that can accept large capacity magazines. Today “increasing capacity” is used as a central competitive marketing tool. Even Ruger, the company founded by Bill Ruger who plainly stated “no honest man needs more than 10 rounds in any gun,”<sup>28</sup> now touts the 12+1 round capacity of its new Max9 pistol.<sup>29</sup> 12+1 round capacity means the pistol’s total capacity is 13 rounds: 12 rounds from a full magazine, plus the round in the chamber.

37. Because guns generally do not wear out, and because competitive markets force companies to innovate, most handgun companies now use

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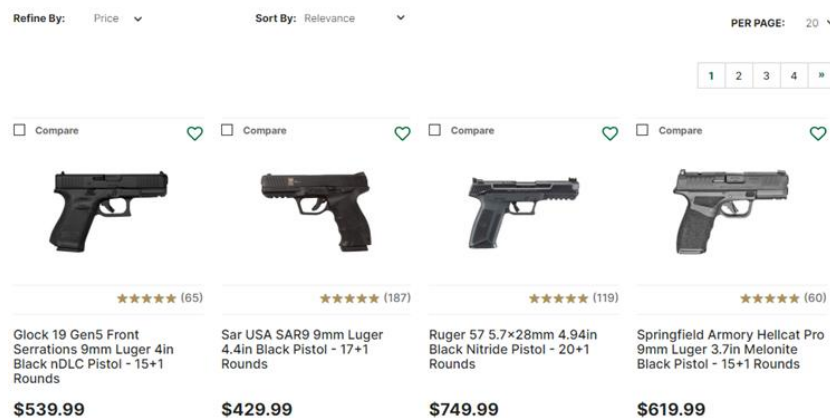
<sup>28</sup> Connecticut Magazine, *Magazine Limits Were First Proposed by Connecticut Gun Maker*, New Haven Register (Apr. 1, 2013), <https://www.nhregister.com/connecticut/article/Magazine-limits-were-first-proposed-by-11435654.php#:~:text=%22No%20honest%20man%20needs%20more,Connecticut%20gun%20maker%20Sturm%2C%20Ruger> (last visited Mar. 13, 2023) (article quoting William B. Ruger, Sr.).

<sup>29</sup> Ruger, Ruger Max-9 pistol, <https://www.ruger.com/products/max-9/models.html> (last visited Feb. 1 2023).

“increasing capacity” as a way to find advantage in the marketplace. In my opinion, this is a byproduct of market competition, not of self-defense necessity.

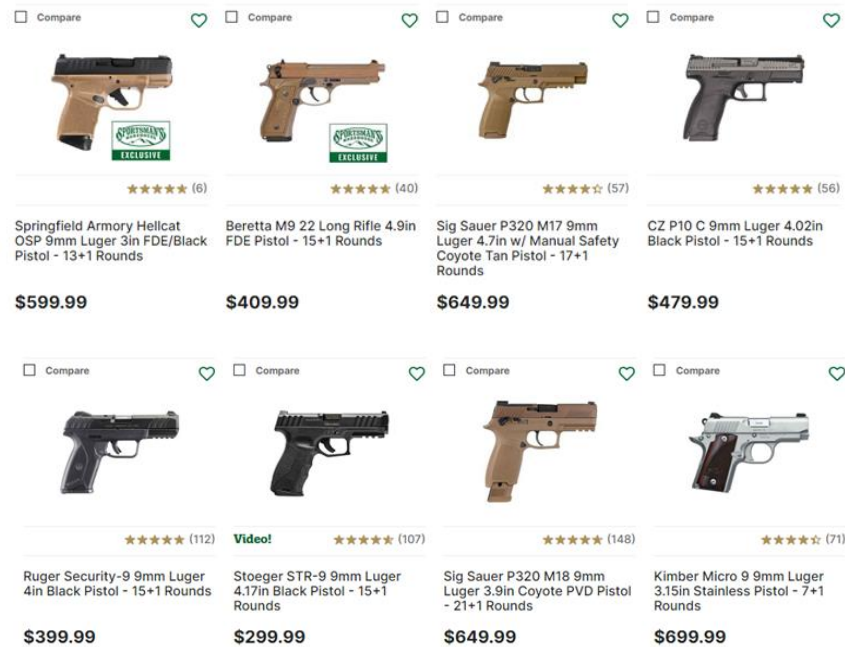
38. The following is a 2023 listing of the 12 top-selling handguns from Sportsmans Warehouse, one of the leading firearms retailers in the United States. Eleven of twelve models in the listing are sold and marketed with large capacity magazines (LCMs), and all of those eleven models are versions of firearms that have been developed and released within the last 10 years. In other words, the market has become dominated with handguns sold with large capacity magazines as a result of competitive new-product development and the trend is accelerating.<sup>30</sup>

#### Top Selling Handguns (62)



<sup>30</sup> Sportsmans, Handguns, <https://www.sportsmans.com/shooting-gear-gun-supplies/handguns/c/cat139633> (last visited Feb. 20, 2023) (screen captures from Sportsman's Warehouse website).





39. This recent change in the handgun market is led by innovations and “social license” created in the AR-15 market. Modern AR-15 marketing dramatically increases the prevalence of large capacity magazines in new firearms because a major part of that marketing is centered on increasing maximum offensive killing capacity. AR-15s and LCM-capable pistols are now increasingly prevalent in the “tactical market.” In my opinion, large capacity magazines are not necessary for self-defense, but are integral to this marketing both in handguns and in rifles.

40. At the same time the NSSF was actively softening the image of these assault weapons, many individual assault rifle companies began to market the guns in ways that dispensed with any contrived attempt to pretend the guns were

1 “sporting” firearms. This has coincided with a trend towards increased capacity  
2 and lethality. This trend is easy to see in AR-15s, especially when current rifles  
3 are compared to the assault rifles requested and adopted by the U.S. military or  
4 those sold by Colt 30 years ago. The commercially available AR-15s of today are  
5 more reliable, more accurate, more ergonomic, and—therefore—more effective  
6 in killing. This trend of “improvement” continues and is aggressively advertised  
7 each day by dozens of firearms companies. For example, this is a typical  
8 marketing page<sup>31</sup> for an AR-15 manufacturer in which a prominent company  
9 advertises the various ways in which its features “improve” upon the basic  
10 AR-15 (additionally notice the large capacity magazine protruding in front of the  
11 pistol grip):

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21 <sup>31</sup> Daniel Defense, <https://danieldefense.com/daniel-dna> (last visited  
22 Jan. 10, 2023).

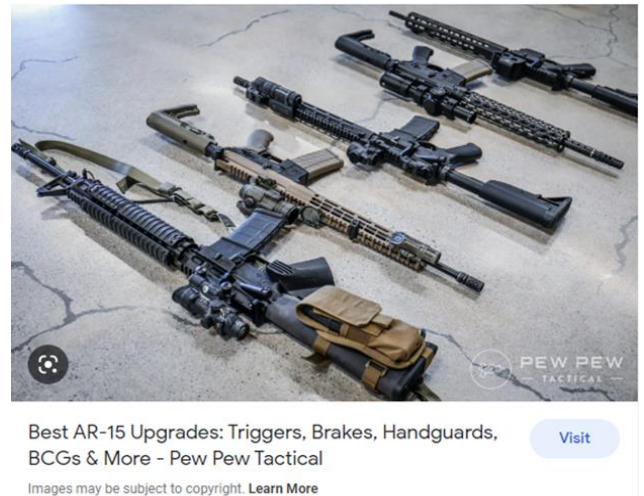


41. The increase in the AR-15 market has also facilitated an increase in accessory availability for the AR-15 and similar firearms. These accessories are commonly referred to as “furniture” because they are items a rifle owner can add to the gun, just as a person would add furniture to personalize an apartment.

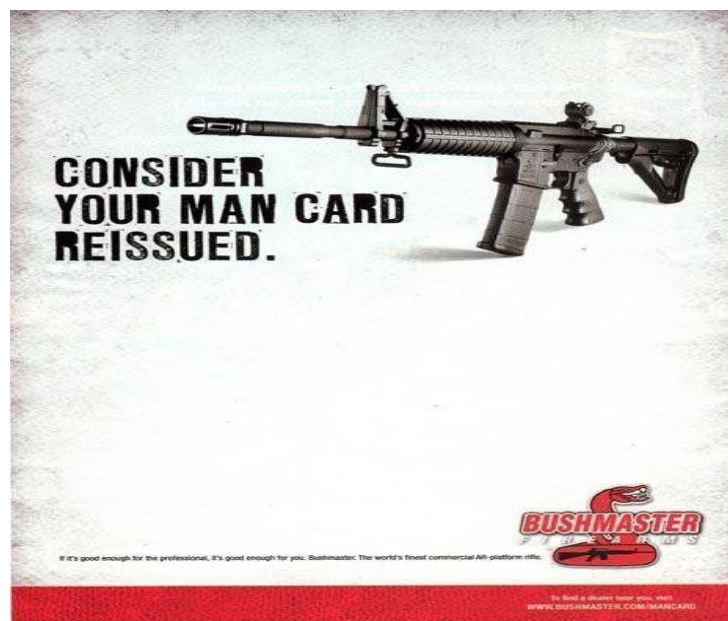
42. Most AR-15s and similar firearms now incorporate features designed to accept one or more of dozens of accessories (furniture), all of which are designed and marketed to increase the effectiveness of the rifle in battlefield situations. The list of accessories includes hundreds of large capacity magazine options, highly-effective electronic optics, more sensitive triggers, devices such as bump stocks and modified trigger systems that convert guns to near-fully-automatic rates of fire, forward and pistol grip options, tactical lights, laser-pointing devices, and many others. Almost none of these accessories were available to the United States military at the time of the rifle's adoption in the early 1960s. And in many cases, U.S. civilians can now outfit rifles in a manner more lethal than the rifles carried by the military. There are now hundreds of companies and retailers who encourage customers to make their rifles more effective by accessorizing. The following are examples of industry marketing efforts which illustrate this trend (and note that every example includes a rifle equipped with an LCM):<sup>32</sup>

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<sup>32</sup> AR-15 accessory article examples: Tactical-Life, *Top 10 Black Guns AR Accessories*, <https://www.tactical-life.com/firearm-news/top-10-black-guns-ar-accessories/> (last visited Jan. 10, 2023), and Eric Hung, *Best AR-15 Furniture & Accessories*, PewPewTactical.com (updated Aug. 21, 2022), <https://www.pewpewtactical.com/best-ar-15-furniture-accessories/> (last visited Jan. 10, 2023).



43. The competitive AR-15/assault rifle marketplace has also resulted in manufacturers seeking to create new customers through professional, targeted marketing campaigns. Most of these campaigns prominently feature large capacity magazines and overtly target young American males, such as this example from 2010:



1 The gun and LCMs advertised in this campaign (Bushmaster XM15 rifle) has  
 2 been used by young men in notable mass shootings, including those in Sandy  
 3 Hook, Connecticut and Buffalo, New York.<sup>33</sup>

4 44. Other prevalent AR-15 marketing encourages potential customers to  
 5 buy and deploy the same weaponry and same large capacity magazines as elite  
 6 Special Forces units of the U.S. military. It is my experience that most of these  
 7 customers are young men. Despite the “modern sporting rifle” claims, the  
 8 firearms industry capitalizes on the AR-15-style weapons’ and large capacity  
 9 magazines’ association with offensive military weaponry in marketing and  
 10 selling to young men, as in this example:



19 <sup>33</sup> Ammoland, *Proof of Your Manhood – The Man Card from Bushmaster*  
 20 (posted May 7, 2010), [https://www.ammoland.com/2010/05/bushmaster-man-](https://www.ammoland.com/2010/05/bushmaster-man-card/#axzz7q0HQao58)  
 21 [card/#axzz7q0HQao58](https://www.ammoland.com/2010/05/bushmaster-man-card/#axzz7q0HQao58) (last visited Jan. 10, 2023) (Bushmaster XM15 Mancard  
 22 advertising article).



1 A version of the Daniel Defense Rifle in this advertisement was the weapon used  
2 in the Uvalde, Texas shooting:<sup>34</sup>

3 45. Smith and Wesson's AR-15 variant is now widely reported to be the  
4 best-selling AR-15 in the United States. These rifles and their accompanying  
5 large capacity magazines have been used in notable mass shootings including in  
6 the Parkland, Florida school shooting and in the Highland Park, Illinois July 4th  
7 parade shooting. Smith and Wesson's primary customers for this rifle are U.S.  
8 civilians who are generally not trained in military or police tactics, nor monitored  
9 by military safety protocols. But the company's chosen name for this rifle—the  
10 M&P15, which means "Military and Police AR-15"—suggests buyers will be  
11 equipped with the same offensive rifles as trained military and police units.<sup>35</sup>  
12 Here is an image of the rifle (again notice the conspicuous large capacity  
13 magazine):

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16 <sup>34</sup> Michael Daly, *Uvalde Shooter's Gunmaker Hypes 'Revolutionary'*  
17 *New Killing Machine*, The Daily Beast (updated June 8, 2022),  
18 [https://www.thedailybeast.com/uvalde-shooter-salvador-ramos-gunmaker-](https://www.thedailybeast.com/uvalde-shooter-salvador-ramos-gunmaker-daniel-defense-hypes-revolutionary-new-killing-machine)  
19 [daniel-defense-hypes-revolutionary-new-killing-machine](https://www.thedailybeast.com/uvalde-shooter-salvador-ramos-gunmaker-daniel-defense-hypes-revolutionary-new-killing-machine) (showing Daniel  
20 Defense advertisement).

21 <sup>35</sup> Smith & Wesson, M&P 15 Sport II Series, [https://www.smith-](https://www.smith-wesson.com/product/m-p-15-sport-ii)  
22 [wesson.com/product/m-p-15-sport-ii](https://www.smith-wesson.com/product/m-p-15-sport-ii) (last visited May 16, 2023).



46. An increasing number of smaller AR-15 manufacturers now regularly seek to grow their market through advertisements that depict young men with AR-15s equipped with large capacity magazines, inciting or engaging in armed urban warfare, like in this recent example from AR-15 maker Spike's Tactical. By calling out cities that saw protests and direct, often violent conflict between political groups, the advertisement encourages men to deploy their AR-15s (each one equipped with large capacity magazine) in armed conflict across the United States:<sup>36</sup>

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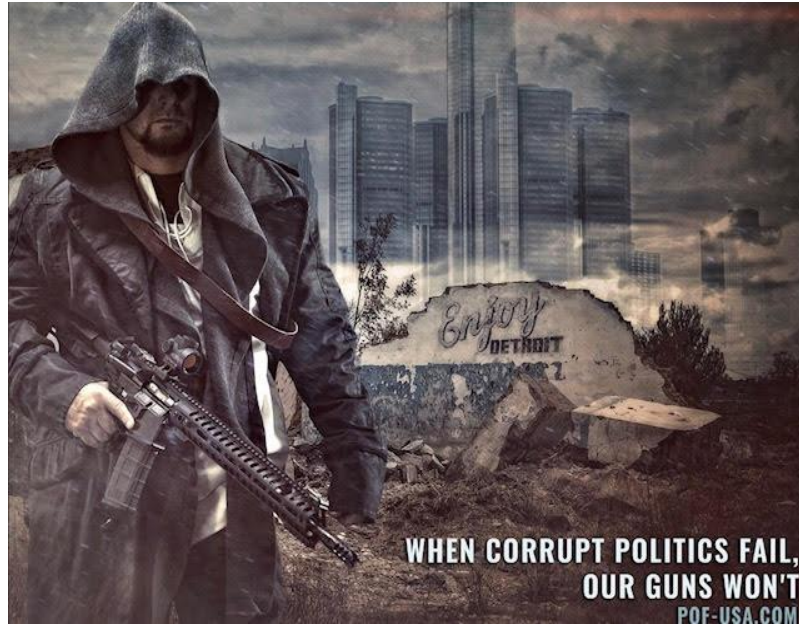
<sup>36</sup> Spike's Tactical, *Left-wing Media Outlets Lose Minds Over Gun Ad, Disregard Basic Rules of Journalism*, posted Jan 11, 2018, <https://www.spikestactical.com/press/left-wing-media-outlets-lose-minds-over-gun-ad-disregard-basic-rules-of-journalism/> (last visited Jan. 10, 2023) (Spike's





Tactical Antifa advertisement).

1           47. Some AR-15 manufacturers now often seek to spur sales by  
 2 depicting men deploying their personal AR-15s and large capacity magazines in  
 3 self-appointed armed offensive vigilante actions, such as this advertising image  
 4 supplied by the AR-15 maker Patriot Ordnance Factory:<sup>37</sup>

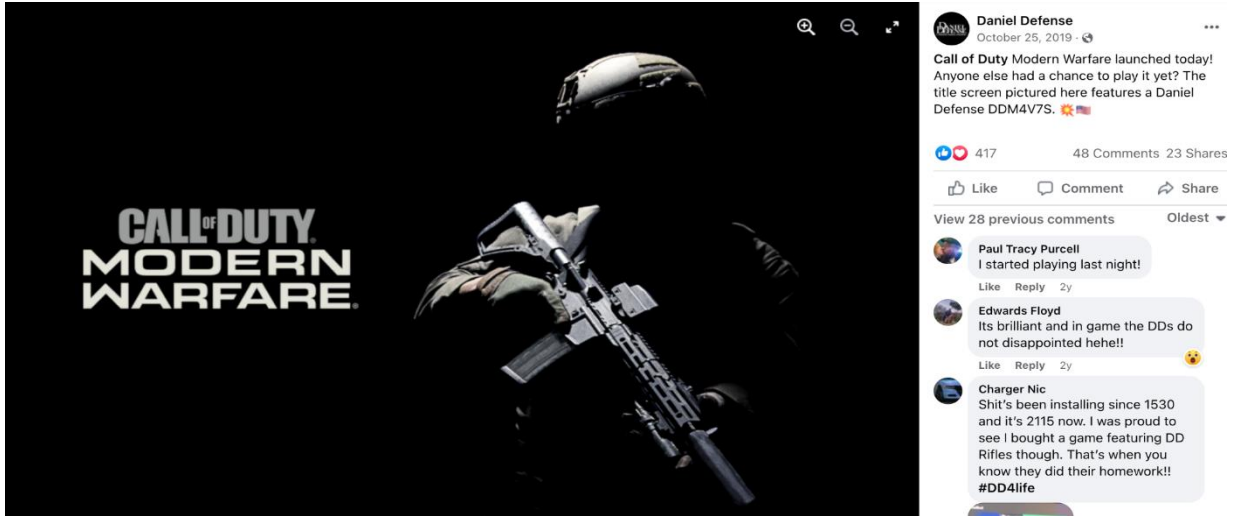


14           48. Many firearms companies now seek out, and celebrate placement of  
 15 firearms with large capacity magazines in popular video games commonly played  
 16 by children. The following is a notable example of an AR-15 company  
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21           <sup>37</sup> Patriot Ordnance Factory, <https://pof-usa.com/wallpapers/> (last visited  
 22 Jan. 10, 2023).

celebrating the placement of their gun into the Call of Duty Modern Warfare video game:<sup>38</sup>



49. Some prominent AR-15 companies design and market their rifle models with specific suggested uses that bear obvious similarities to mass shooting events that have happened in U.S. urban environments such as the Pulse Nightclub in Orlando, Florida; the Route 91 Harvest music festival in Las Vegas, Nevada; and the shooting at a Walmart in El Paso, Texas. These campaigns typically do not reference self-defense and instead rely upon marketing assault

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<sup>38</sup> Ryan Busse, *The Gun Industry Created a New Consumer. Now It's Killing Us.*, The Atlantic (updated July 20, 2022), <https://www.theatlantic.com/deas/archive/2022/07/firearms-industry-marketing-mass-shooter/670621/>.



1 rifles and LCMs in offensive actions. This is one relevant example from AR-15  
 2 maker Wilson Combat:<sup>39</sup>



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 10 50. There are many AR-15 companies that combine the trends of  
 11 continuous improvement, accessorization (including multiple LCMs), and  
 12 modern digital marketing to encourage potential customers to optimize their  
 13 rifles through an online ordering process. Below is one such example.<sup>40</sup> The  
 14 official corporate name of this manufacturer further suggests the preferred use of  
 15 their AR-15s is in offensive action from “rooftops,” which is precisely how the  
 16 shooter during the July 4th Highland Park, Illinois parade deployed his AR-15  
 17 rifle and LCMs.

18  
 19  
 20 <sup>39</sup> Wilson Combat, The Super Sniper, [https://www.wilsoncombat.com/ar-](https://www.wilsoncombat.com/ar-calibers/224-valkyrie/super-sniper/)  
 21 [calibers/224-valkyrie/super-sniper/](https://www.wilsoncombat.com/ar-calibers/224-valkyrie/super-sniper/) (last visited Jan. 10, 2023).

22 <sup>40</sup> Rooftop Arms, <https://rooftoparms.com/> (last visited Jan. 10, 2023).



51. In the last five years, there is an increasing trend from accessory manufacturers to offer even higher capacity magazines for rifles and many handguns. One example is a picture from the highly touted 2018 ProMag introduction of their 50 round drum magazine for Glock Pistols.<sup>41</sup> This allows a person to shoot 50 bullets from this pistol without reloading.

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<sup>41</sup> The Firearms Blog, *[SHOT-19] ProMag Glock 50 Round Drum Mags*, posted Jan. 23, 2019, <https://www.thefirearmblog.com/blog/2019/01/23/shot-2019-promag-glock-50-round-drum-mags/> (last visited Feb. 24, 2023) (ProMag 50 round drum review).



52. Many of these higher capacity product developments were first pioneered by accessory companies. But many gun manufacturers also increasingly offer their own large capacity magazines. Verification of this trend is found in The ArmoryLife’s review of the new Springfield Armory 35-round magazine for their popular XD pistols (pictured below); “We have all seen the growth of enhanced capacity magazine systems, from drum magazines to stick magazines, but most of them come from the aftermarket. Well, not anymore. Springfield has given us a new 35-round extended magazine for the XD-M family of 9mm pistols.”<sup>42</sup>

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<sup>42</sup> Michael Mills, *Review: XD-M 9MM 35-Round Extended Magazine*, The Armory Life (Dec. 15, 2021), <https://www.thearmorylife.com/review-xd-m-9mm-35-round-extended-magazine/> (last visited Mar. 15, 2023) (Review of Springfield 35 round handgun magazines).

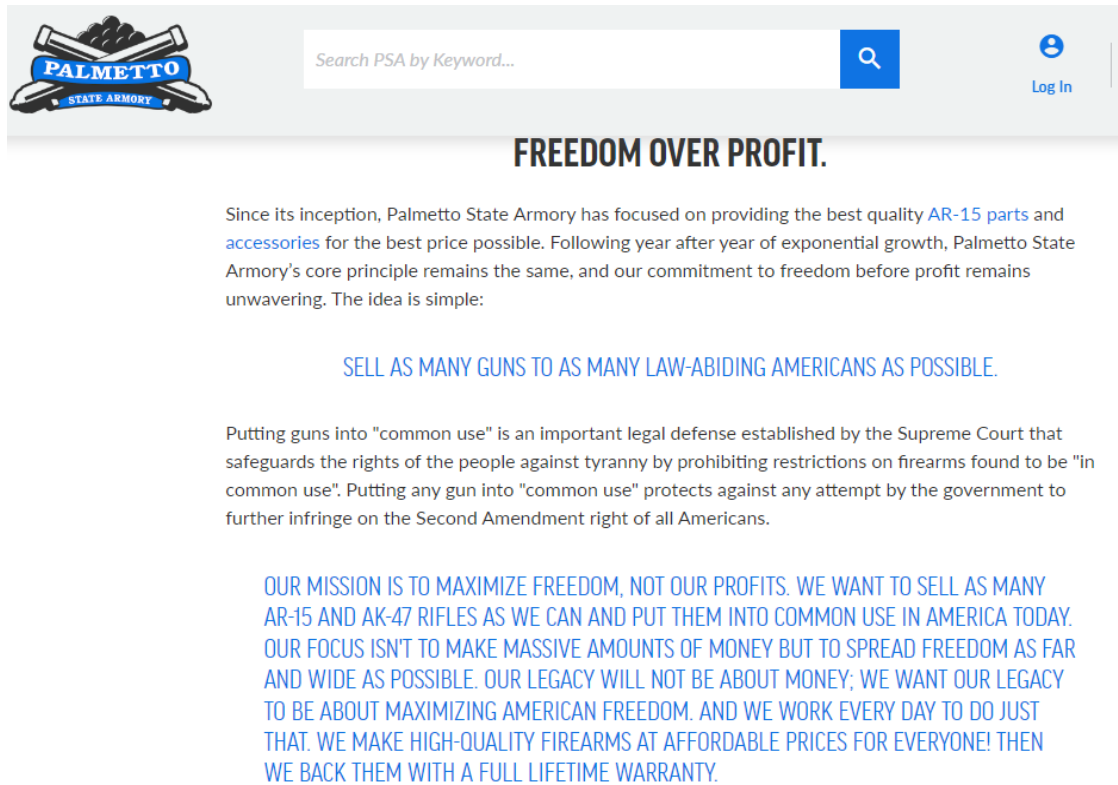
53. This proliferation of assault weapons has been married with an overt legal strategy to increase legal protection over firearms by making assault weapons and other tactical firearms more and more “common” regardless of dangers presented by proliferation. An example of this industry-wide effort can be found in the mission statement of Palmetto Armory, one of the largest firearm retailers in the United States. Palmetto publicly partners with most of the largest manufacturers and even hosts a large annual “gathering” supported and attended by leading industry companies.<sup>43</sup> Palmetto’s prominence is important because their well-known and openly-advertised mission, depicted in the image below, is not focused on self-defense or even profit. Rather, it is specifically focused on quickly establishing that certain guns and LCMs are “common” as mentioned in the *Heller* decision; “we want to sell as many AR-15 and AK-47 rifles as we can and put them into common use in America today.”<sup>44</sup>

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<sup>43</sup> Palmetto State Armory, The Gathering, <https://palmettostatearmory.com/thegathering.html> (last visited Mar. 21, 2023) (advertising event).

<sup>44</sup> Palmetto State Armory Mission Statement, <https://palmettostatearmory.com/about-psa.html> (last visited Mar. 22, 2023).

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## 2. Current sales and retail marketing practices have resulted in irresponsible sales and proliferation of tactical weapons

54. During my more than two decades in the firearms industry, I witnessed a dramatic shift in the ways in which guns were sold and the pressures which influenced these practices. As I have referenced above, the industry experienced dramatic growth between the years 2005 and 2020. This growth meant that an industry that had largely operated in something of a “cottage industry” atmosphere shifted to one in which the pressures of quarterly reports, publicly traded companies, profit margins and aggressive sales practices became much more prominent.



1           55. In the last 10 years (2010-2020) of my time inside the industry, I  
 2 was well aware of industry encouragement for responsibility (referred to  
 3 extensively earlier in this opinion), but I did not encounter any firearms industry  
 4 member that employed any sort of official check or audit on its retailers to ensure  
 5 that those responsible and legal practices were followed.

6           56. Further, I was often aware of rewards for “stretching the envelope”  
 7 with sales and marketing practices that drove sales higher. Palmetto State Armory  
 8 (mentioned in the previous section) is a good example. Retailers such as Palmetto  
 9 were rewarded with better deals, more discounts, and better allocations if they  
 10 engaged in “norm breaking” sales practices that resulted in higher short term  
 11 sales. These practices included offering firearms branded to extremist groups  
 12 such as the “Boogaloo Boys”<sup>45 46</sup> and encouraging web-based sales programs that  
 13 drove prices lower and decreased face-to-face interaction at brick-and-mortar  
 14 retail stores. Retailers like Palmetto were encouraged to sell guns across the  
 15

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16           <sup>45</sup> Ian Karbal, *A Gunmaker Marketed Anti-Government Boogaloo*  
 17 *Products. Then it Lobbied Congress.*, The Trace (Mar. 15, 2021),  
 18 [https://www.thetrace.org/2021/03/palmetto-state-armory-boogaloo-south-](https://www.thetrace.org/2021/03/palmetto-state-armory-boogaloo-south-carolina-nelson-mullins/)  
 19 [carolina-nelson-mullins/](https://www.thetrace.org/2021/03/palmetto-state-armory-boogaloo-south-carolina-nelson-mullins/) (Palmetto Boogaloo marketing).

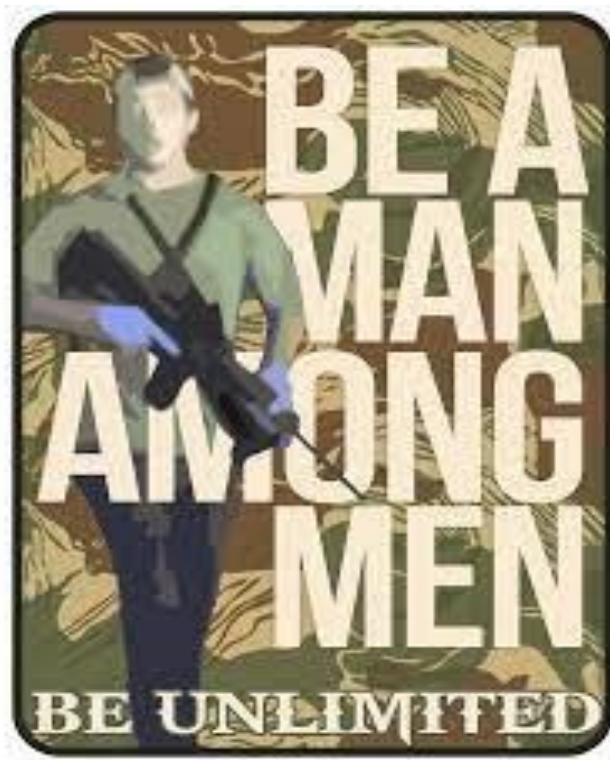
20           <sup>46</sup> The Firearm Blog, *POTD: PSA “Big Igloo Aloha” Custom Series AK*,  
 21 posted Feb. 3, 2020, [https://www.thefirearmblog.com/blog/2020/02/03/potd-](https://www.thefirearmblog.com/blog/2020/02/03/potd-psa-big-igloo-aloha-custom-ak/)  
 22 [psa-big-igloo-aloha-custom-ak/](https://www.thefirearmblog.com/blog/2020/02/03/potd-psa-big-igloo-aloha-custom-ak/) (Palmetto Boogaloo Rifle).

1 nation at lower prices. This resulted in well-known benefits to these retailers, who  
 2 often received last-minute discounts and special deals when large manufacturers  
 3 needed to meet quarterly sales goals.

4 57. This was particularly true with large companies like Smith  
 5 and Wesson. Like many other companies, including the one I worked for, Smith  
 6 and Wesson would offer free guns to retailers during downturns in sales. This is  
 7 an example of one such sales program from S&W:



1           58. Other large retailers seek out higher volumes by dog-  
 2 whistling their customers with advertisements and social media posts referencing  
 3 recent mass shootings, unrest, or vigilantism. One notable example is Big Daddy  
 4 Outdoors, which advertises itself as one of the largest firearms retailers in the  
 5 nation. Big Daddy posted the image below on their social media to drive sales by  
 6 celebrating the actions of Kyle Rittenhouse:<sup>47</sup>



18  
19           <sup>47</sup> Mike McIntire, Glenn Thrush, Eric Lipton, *Gun Sellers' Message to*  
 20 *Americans: Man Up*, The New York Times (June 18, 2022),  
 21 <https://www.nytimes.com/2022/06/18/us/firearm-gun-sales.html> (Big Daddy  
 22 Unlimited using Rittenhouse).

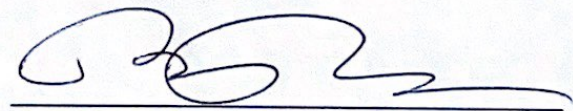


1           59. Even after this image was posted—in what I observed to be common  
2 industry practice—there was no penalty or audit or questioning of Big Daddy  
3 Unlimited from their suppliers, which included the largest firearms companies in  
4 the industry. Big Daddy Unlimited continues to claim the strong support of most  
5 of the leading firearms companies in the industry.

6           60. These examples are illustrative of my experience that although there  
7 is an understanding of what is or is not responsible, there is reluctance to monitor  
8 or enforce any sort of standard. Moreover, there is often significant reward for  
9 engaging in activities that increase sales even if those activities are understood to  
10 be irresponsible.

11  
12           I declare under penalty of perjury under the laws of the State of  
13 Washington and the United States of America that the foregoing is true and  
14 correct.

15           DATED this 23<sup>rd</sup> day of May, 2023, at Kallispell, Montana.

16  
17 

18 RYAN BUSSE  
19  
20  
21  
22

**CERTIFICATE OF SERVICE**

I hereby certify that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court's CM/ECF System which will serve a copy of this document upon all counsel of record.

I declare under penalty of perjury under the laws of the State of Washington and the United States of America that the foregoing is true and correct.

DATED this 1st day of June, 2023, at Olympia, Washington.

*s/ Leena Vanderwood*  
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